



# METRO AUTHORITY

## 2006 ANNUAL REPORT

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## **EXECUTIVE SUMMARY**

### **Background**

The METRO Authority was created in November of 2002 as a result of the METRO Act (PA 48 of 2002) with the purpose of streamlining the right-of-way permitting processes between municipalities and telecommunication providers. Historically, providers who were expanding their services into or within municipalities approached each municipality and completed whatever process these municipalities required. Municipalities were not required to have a standard permitting process or fee structure.

The METRO Act was the result of a collaborative agreement between municipalities and providers. The ACT allows the METRO Authority, on behalf of municipalities, to recover the costs of such right-of-way use by the providers. It gives the METRO Authority the responsibilities to coordinate public right-of-way matters with municipalities, to assess fees on telecommunication providers owning facilities in public rights-of-way within a municipality in a metropolitan area, and to make payments to municipalities that have “opted in.” Currently, 100% of fees assessed on providers are paid out to municipalities. In 2006, maintenance fees invoiced and collected from providers exceeded \$21.3 million. However, this was \$1.7 million less than collected for 2005.

The goals of the METRO Authority are to:

- Encourage competition in the availability, prices, terms, and other conditions of providing telecommunication services.
- Encourage the introduction of new service, the entry of new providers, the development of new technologies, and increase investment in the telecommunication infrastructure in Michigan.
- Improve the opportunities for economic development and the delivery of telecommunication services;
- Streamline the process for authorizing access to and use of public rights-of-way by telecommunication providers.

- Ensure the reasonable control and management of public rights-of-way by municipalities within Michigan.
- Provide for a common public rights-of-way maintenance fee applicable to telecommunication providers.
- Ensure effective review and disposition of disputes under the Act.
- Allow for a tax credit for providers to recover the costs under the Act (and ensure that providers do not pass costs onto end-users thru rates and charges for telecommunication services).
- Create an Authority (METRO) to coordinate public right-of-way matters with municipalities.

The METRO Authority has prepared this report in compliance with Section 3 of Michigan Public Act 48 of 2002, which requires the METRO Authority to file an annual report of its activities for the preceding year with the Governor and the members of the legislative committees dealing with energy, technology, and telecommunications issues.

## **Year 2006 Summary**

The annual report of the year 2006 activities of the METRO Authority is enclosed. The following provides a summary of some of the more informative aspects of the third year of operation:

### **A. Reporting of Footage and Access Lines**

All providers that have telecommunication facilities in the State of Michigan are required to report to the METRO Authority the following information:

1. Linear footage for each city, village, or township defined as—occupied by the provider regardless of the quantity or type of the provider's facilities utilizing the public right-of-way or whether the facilities are leased to another provider.
2. Total number of owned access lines, including wholesale and retail
3. Total number of linear feet by underground and above ground broken down by city, village and township boundary.
4. Competitive Local Exchange Carriers (CLECs) must report total linear feet in each of the Incumbent Local Exchange Carriers service areas (ILECs).
5. Cable providers may satisfy the fee requirement by certifying that their aggregate investment in Michigan, since January 1, 1996, in facilities capable of providing broadband Internet transport access service exceeds the aggregate amount of the maintenance fees assessed.

Initially, all telecommunication providers were required to provide good faith estimates of the above information by March 31, 2003 and were invoiced pro rata for the period November 1, 2002 through March 31, 2003. They were required to true up their information by November 1, 2003 and were either credited for excess payment of their 2004 fees against their 2004 fees, or invoiced if additional fees were due for 2003.

Beginning with the 2004 billing period, providers report new and/or retired footages and access lines to the METRO Authority no later than March 18<sup>th</sup> of each year. Providers are invoiced based on the information available to the METRO Authority as of that date. In addition, cable companies report their total aggregate investments reported in Michigan.

### **B. 2006 Maintenance Fee Payments (Attachment B)**

- ILECs Invoiced	\$20,205,434	Collected	\$20,194,834
- CLECs Invoiced	<u>\$ 1,211,439</u>	Collected	<u>\$ 1,188,371</u>
- Totals Invoiced	\$21,416,873	Collected	\$21,383,205

**C. 2005 Payments to Municipalities**

- Cities and Villages (Attachment C)	\$16,022,017.51
- Townships (Attachment D)	<u>\$ 5,385,650.35</u>
- Total Payments	\$21,407,667.86

Note: 2006 payments include funds collected in 2005 after the July distribution, plus any accrued interest.

**D. Municipalities Eligible to Receive 2006 METRO Act Funds\***

	<b>Total</b>	<b>Eligible for 2006 Funds</b>	<b>Ineligible for 2006 Funds</b>
Cities	271	267	4
Villages	264	233	31
Townships	1,243	1,239	4
Total	1,778	1,739	39

\* *Based on municipalities submitting copies to the METRO Authority of their ordinances and/or resolutions conforming with PA 48 requirements prior to the initial December 31, 2003 statutory deadline; and the May 15, 2004 extended deadline. Note: Pending legislation (SB 108) if enacted will allow some ineligible municipalities to become eligible for 2007 funding.*

Attachment F illustrates the municipalities that are not currently eligible to receive METRO Act Funds

**E. Michigan Public Service Commission  
(METRO Act, Section 8(14))**

1. Tax Credits Granted to ILECs	\$20,194,834
2. Tax Credits Granted to CLECs	\$322,536
3. Right-of-Way Permits Received	61
– Unilateral	46
– Bilateral	7
– Unspecified Type	4
– Approved Permits	57
– Denied Permits	4
– Pending Permits	0

See Attachments E and I.

***F. State Legislation***

During 2006, the following proposed/enacted legislation impacting the METRO Act was considered:

***A. Proposed Legislation***

- Senate Bill 1211, as proposed, would have allowed the 39 currently ineligible municipalities to become eligible to receive year 2006 METRO Act funding. This legislation was not enacted in 2006, but was proposed again via SB108 in 2007.
- House Bill 6667, as proposed, would have amended Section 5(3) regarding permits. This legislation was not enacted.

***B. Enacted Legislation***

- House Bill 6456, the Video Services Act (PA 480 of 2006) became effective January 1, 2007 to provide for uniform video service local franchises; to promote competition in providing video services in this state; to ensure local control of rights-of-way; to provide for fees payable to local units of government; to provide for local programming; to prescribe the powers and duties of certain state and local agencies and officials; and to provide for penalties.

This Act references/impacts the METRO Act in several ways:

--*Section 2(3)(e) of PA 480 states:*

“An exact description of the video service area footprint to be served, as identified by a geographic information system digital boundary meeting or exceeding national map accuracy standards. For providers with 1,000,000 or more access lines in this state using telecommunication facilities to provide video services, the footprint shall be identified in terms of entire wire centers or exchanges. An incumbent video provider satisfies this requirement by allowing a franchising entity to seek right-of-way related information comparable to that required by a permit under the metropolitan extension telecommunications rights-of-way oversight act, 2002 PA 48, MCL 484.3101 to 484.3120, as set forth in its last cable franchise or consent agreement from the franchising entity entered before the effective date of this act.”

This reference is to the “route map” requirements of the METRO Act which is an issue yet to be resolved between municipalities and providers as to the details to be included in “route maps”, and may be of some concern as to the “completeness” of a franchise agreement per Section 3(3) of PA 480.

*--Section 6(11) of PA 480 reads:*

“A video service provider is entitled to a credit applied toward the fees due under subsection (1) for all funds allocated to the franchising entity from annual maintenance fees paid by the provider for use of public rights-of-way, minus any property tax credit allowed under section 8 of the metropolitan extension telecommunications rights-of-way oversight act, 2002 PA 48, MCL 484.3108. The credits shall be applied on a monthly pro rata basis beginning in the first month of each calendar year in which the franchising entity receives its allocation of funds. The credit allowed under this subsection shall be calculated by multiplying the number of linear feet occupied by the provider in the public rights-of-way of the franchising entity by the lesser of 5 cents or the amount assessed under the metropolitan extension telecommunications rights-of-way oversight act, 2002 PA 48, MCL 484.3101 to 484.3120. A video service provider is not eligible for a credit under this subsection unless the provider has taken all property tax credits allowed under the metropolitan extension telecommunications rights-of-way oversight act, 2002 PA 48, MCL 484.3101 to 484.3120.

This section impacts the METRO Act as follows:

- METRO Authority, MPSC, and Treasury need to coordinate calculation/verification of the property tax credits granted to providers per Section 8(14) of the METRO Act and PA 50 of 2002.
- Need to address how 39 non-opted in municipalities are impacted under Section 6(11). As these 39 municipalities currently receive no METRO Act funds, can providers receive tax credits; or if they do, are such municipalities doubly impacted—receive no METRO Act funds and their franchise fee is reduced by the amount of funds they could have received.

*--Section 8(3) of PA 480 reads:*

“A franchising entity may impose on a video service provider a permit fee only to the extent it imposes such a fee on incumbent video providers, and any fee shall not exceed the actual, direct costs incurred by the franchising entity for issuing the relevant permit. A fee under this section shall not be levied if the video service provider already has paid a permit fee of any kind in connection with the same activity that would otherwise be covered by the permit fee under this section or is otherwise authorized by law or contract to place the facilities used by the video service provider in the public rights-of-way or for general revenue purposes.”

This section of PA 48 relates to the fact that providers that pay the METRO Act maintenance fee (Section 4(3)) do not pay local fees for access or use of



municipality rights-of-way. However, this is not applicable to providers that do not pay the METRO Act maintenance fee.

**2006**

**METRO**

**AUTHORITY**

**ACTIVITIES**

## **2006 METRO Authority Activities**

This report has been prepared pursuant to Section 3 of the METRO Act (PA 48 of 2002).

### **I. Invoice Calculations**

April 1 to March 31 is the annual period covered by each assessment and April 29 the date for payment (Sec 8(2)). Providers are invoiced each April based on the information available as of mid-March of each year. According to Section 8 of PA 48, providers shall pay a fee due to the METRO Authority as follows:

**ILECs:** the lesser of

- a. \$0.05/linear foot; or
- b. Number of access lines times the statewide per access line per year of the provider with the highest number of access lines in Michigan (SBC Ameritech).

In 2006 SBC Ameritech reported 3,380,269 access lines and 302,133,167 linear feet.

302,133,167 linear feet *times* \$0.05 = \$15,106,658  
\$15,106,658 *divided by* 3,380,269 access lines = \$4.4691

Therefore, the 2006 access line rate for ILECs was \$4.4691

**CLECs:** rate is based on linear foot charge only for each ILEC it resides in:

Each ILEC per linear foot fee times CLECs linear feet in that ILECs territory

### **Cable Providers:**

\$0.01 per linear foot. Cable providers have been asked to report the amount of aggregate investments in Michigan since January 1, 1996, in facilities capable of providing broadband internet transport service. This assessment may be satisfied if the amount of investments certified by the cable provider exceeds the amount assessed.

Because reported investments exceeded assessments in all cases, no cable providers were invoiced in 2006.

## II. Telecommunication Provider Assessments

Invoices are typically mailed out by April 1<sup>st</sup> of each year based on the information provided by each provider and based on SBCs number of access lines.

The total amount received from providers was deposited into a State of Michigan account, which is used for compensatory payments to those municipalities that have opted in.

### Three-Year Comparison of Assessments

	<u>2003 True Ups</u>	<u>2004 *</u>	<u>2005</u>	<u>2006</u>
<b><i>Incumbent Local Exchange Carriers (ILECs)</i></b>				
Total number reporting	39	39	39	39
Total linear feet reported	535,676,249	535,780,715	539,094,466	513,159,565
SBC linear feet reported	326,077,193	326,077,193	328,715,896	302,133,167
Total access lines reported	4,736,867	4,736,345	4,585,225	4,521,688
SBC access lines reported	3,603,160	3,603,160	3,411,784	3,380,269
Amount invoiced	\$2,418	\$20,221,249	\$22,086,639	\$20,205,434
<b><i>Competitive Local Exchange Carriers (CLECs)</i></b>				
Total number reporting	33	34	37	40
Total linear feet reported	21,093,867	21,515,096	23,333,819	26,091,201
Amount invoiced	\$1,813	\$915,482	\$1,191,663	\$1,211,439
<b><i>Cable Companies</i></b>				
Total number reporting	14	14	15	15
Linear feet reported	263,648,668	264,170,412	267,462,793	200,173,718
Amount invoiced	\$0	\$1,483	\$0	\$0
<b><i>Total amount invoiced</i></b>	<b>\$4,231</b>	<b>\$21,138,214</b>	<b>\$23,277,302</b>	<b>\$21,416,873</b>

\*2004 figures reflect credits due from 2003 true ups

### Summary of 2006 Assessments

	<u>Total Invoiced</u>	<u>Total Payments Rec'd by 6/30/06</u>
<b><i>ILECs</i></b>	\$20,205,434	\$20,206,007
<b><i>CLECs</i></b>	<u>\$1,211,439</u>	<u>\$1,177,393</u>
<b><i>Total</i></b>	<u>\$121,416,873</u>	<u>\$21,383,380</u>

### ***III. Municipality Payments***

Section 11 of the METRO Act stipulates allocation of funds collected from telecommunication providers. 75% of the funds collected are disbursed to cities and villages based on the formula found in section 13 of 1951 PA 51 administered by the Michigan Department of Transportation. The remaining 25% is disbursed to townships based on their linear feet as a percentage of total linear feet reported for all townships. Normally, calculations are made for payments to each municipality in Michigan, then the amounts allocated to municipalities that are not opted in – 39 in all – are removed from the calculations and their money is re-distributed to the remaining municipalities.

However, SB1211 was introduced in 2006, with the intention of amending PA48 to allow municipalities currently not opted in one more opportunity to become eligible to receive METRO Act funding. In order to include as many of the non-opted in municipalities in the 2006 payment calculations as possible, the METRO Authority contacted each of the 39 municipalities and asked them to complete and return an “Eligibility Intent Notice Form”. This form gave three options to select from:

Option 1 – the municipality intended to take appropriate action by June 30, 2006 to become eligible (opt-in) to be allocated for 2006 METRO Act funds to be distributed by June 15, 2006; and thereafter.

Option 2 – the municipality intended to take appropriate action by December 31, 2006 to become eligible (opt-in) to receive their pro-rata distribution of any available 2006 funds after the above cited June 2006 distribution; and thereafter.

Option 3 – the municipality did not intend to take appropriate action to become eligible to receive METRO Act funds in 2006 as cited above; or thereafter.

Of the 39 municipalities contacted, 20 responded: twelve chose option 1, seven chose option 2 and one chose option 3.

When calculating the 2006 municipality payments, eleven of the twelve municipalities that chose option 1 (the twelfth did not return their response in time) were left in the calculations. Payments to these municipalities, totaling \$54,895, were not issued, pending passage of SB1211. However, SB1211 expired at the conclusion of the 2006 legislative session. Therefore, these funds will be carried forward to FY07.

Section 10(5) of PA 48 requires municipalities with populations of over 10,000 to file an annual report on the use and disposition of METRO funds. In 2006, payments were temporarily withheld from municipalities that failed to file annual reports. As of February 28, 2007, five townships and one city, with funds totaling \$191,697, have not filed their 2005 annual reports.

**Summary of Available Funds**

	<b>Cities &amp; Villages (75%)</b>	<b>Townships (25%)</b>	<b>Total</b>
2005 invoices paid by 5/23/06	\$16,037,534.87	\$5,345,844.96	\$21,383,379.83
2006 interest earned	\$7,164.03	\$2,388.01	\$9,552.04
2005 invoices paid after 10/1/05 (FY06)	\$46,119.00	\$15,373.00	\$61,492.00
FY05 carry forward	<u>\$332,028.74</u>	<u>\$110,676.25</u>	<u>\$442,704.98</u>
Subtotal	\$16,422,846.64	\$5,474,282.22	\$21,897,128.85
Less:			
Refunds due for invoice overpayments	<u>(\$8,387.09)</u>	<u>(\$2,795.70)</u>	<u>(\$11,182.79)</u>
Total funds available for disbursement	<u>\$16,414,459.55</u>	<u>\$5,471,486.52</u>	<u>\$21,885,946.06</u>

**Summary of Payments**

Funds available for disbursement	\$16,414,459.55	\$5,471,486.52	\$21,885,946.06
Less:			
FY05 municipal payments made in FY06	(\$177,721.95)	(\$59,240.65)	(\$236,962.60)
FY05 municipal payments in escrow	(\$38,206.88)	(\$12,735.63)	(\$50,942.50)
FY06 payments made to municipalities	(\$16,022,017.51)	(\$5,329,318.72)	(\$21,351,336.23)
Payments held for Option 1 municipalities*	(\$52,268.51)	(\$2,626.99)	(\$54,895.50)
Payments held pending receipt of annual report	(\$124,132.59)	(\$67,564.53)	(\$191,697.12)
Balance remaining	<u>\$112.11</u>	<u>(\$0.00)</u>	<u>\$112.11</u>

\*2006 funds were held for those municipalities choosing Option 1 pending passage of SB1211. SB1211 expired at the conclusion of the 2006 legislative session. Therefore, these funds will be carried forward to FY07.

**IV. Approved Property Tax Credits**

The METRO Act, Section 8(14) and PA 50 of 2002 allows for a property tax credit as the sole means by which providers can recover costs under this Act; and insures that the providers do not pass costs on to the end-users of this state through rates and charges for telecommunication services. These tax credits must be approved by the Michigan Public Service Commission (MPSC). Attachment E illustrates the property tax credits approved by the MPSC for 2006 totals \$20,194,834 for ILECs and \$322,536 for CLECs through 8/24/2006. Note: Effective December 2005, SBC/ATT, per its agreement with the state, became eligible to receive the property tax credit under the METRO Act and for 2006 received a credit of \$15,896,058.

V. **Activities Resolved/Under Review**

A. **Route Map/Permit Requirements**

Section 6(5) of the METRO Act requires that an application for a permit under this section shall include route maps showing the location of the provider's existing and proposed facilities in the format as required by the Authority under subsection (8). Except as otherwise provided by a mandatory protective order issued by the MPSC, information included in the route maps of a provider's existing and proposed facilities that is a trade secret, proprietary, or confidential information is exempt from the Freedom of Information Act, 1976 PA 442.

Section 6(6) of the Act requires that a municipality shall notify the MPSC when it grants or denies a permit, including information regarding the date on which the application was filed and the date on which the permit was granted or denied. The MPSC shall maintain on its website a listing showing the length of time required by each municipality to grant an application during the immediately preceding 3 years.

Section 6(7) of the Act requires that within 90 days after the substantial completion of construction of new facilities in a municipality, a provider shall submit route maps showing the location of the telecommunication facilities to both the commission and the affected municipalities.

Section 6(8) of the Act requires that the MPSC shall, after input from providers and municipalities, require that the route maps required under this section be in a paper or electronic format as the MPSC may prescribe.

Current mapping requirements—The MPSC and the METRO Authority issued a joint minute action in June of 2003. The providers, in the Court of Appeals, challenged the authority of the MPSC to issue mapping requirements; and the MPSC subsequently withdrew its support of the action.

To address route map issues, the METRO Authority established a work group charged with considering the concerns of municipalities and telecommunication providers regarding the requirements and contents of route maps per Section 6 of the METRO Act. This work group met regularly (5-6 meetings) at neutral site(s). The meeting was facilitated by the METRO Authority, which provided background information, recorded minutes, provided meeting sites, etc. Membership of the voting group was comprised of:

- a) 5 members representing municipality interests:
  - a. Michigan Municipal League
  - b. Michigan Township Association
  - c. City of Detroit

- d. Township of Clinton
  - e. PROTEC
- b) 5 members representing telecommunication industry interests:
  - a. AT&T
  - b. Verizon
  - c. Telecommunication Association of Michigan
  - d. Competitive Local Exchange Carriers Association
  - e. Great Lakes Comnet

#### Provider Positions

Most providers, except MCI, hold the opinion that the issue of the contents of route maps was settled when the MPSC withdrew its support of the June 27, 2003 mapping requirements on November 25, 2003 in response to the telecommunication providers legal action. Further, providers assert that the METRO Act does not require the route maps to be as detailed as desired by municipalities; and, finally, providers assert that the METRO Authority has no authority to dictate the contents of route maps.

#### Municipality Positions

Most municipalities/representatives request that the METRO Authority include in the route maps the minimum requirements prescribed by the MPSC and METRO Authority June 27, 2003; and that providers need to submit route maps in the GIS rather than PDF format.

The work group's *primary mission* was to determine:

- a) What a route map consists of and level of detail required (i.e., line drawing; above, below, left, right; I.D. of street names; indicator of linear feet or scaled; municipal boundaries; etc.)
- b) Necessity/requirement for "as built" route maps
- c) Any other disputed issues relating to route map requirements
- d) Work group may agree to compromise on issues not in conflict with PA 48 requirements (i.e., "Route maps are required for new permits since enactment of PA 48 and are not retroactive.")

It was the intent of the METRO Authority that the work group reach consensus and/or propose options to resolve route map issues by May 31, 2006 or sooner. If the proposed options/agreements were in compliance with PA 48 requirements, the METRO Authority would issue a determination by the end of July 2006, that included agreements reached by the work group. The METRO Authority will continue to work toward resolution of this matter in 2007.



***B. Determination No. 5 – De Novo Review***

The METRO Act grants the METRO Authority the power to assess a fee on telecommunication providers that own or lease facilities that occupy the public right-of-way. The METRO Authority issued Determination No. 5 on July 19, 2005 requiring all telecommunication providers that own or lease facilities that occupy the public rights-of-way to pay a fee. Based on a de novo review request by a telecommunication provider, on November 9, 2006, the Michigan Public Service Commission (MPSC) issued an order overturning Determination No. 5. On December 11, 2006, the METRO Authority, via the state Attorney General, filed a claim of appeal of the MPSC's November 9, 2006 order. This matter is pending the decision of the state Appellate Court.

***C. Use of Maintenance Fee Payments Guidelines***

Municipalities with populations over 10,000 are required to report on the usage of the funds they receive under PA 48 of 2002 by April 30 annually. The Act states that municipalities may use funds received under the Act solely for rights-of-way related purposes. Attachment A includes the latest revised guidelines regarding the use of the METRO Act funds.

***D. Reduced Footages/Fee Collections***

Each year the METRO Authority requests each telecommunication provider in Michigan to “true up” (update) their linear footages. They report this information by city, village and township. At the end of April, the METRO Authority invoice the older providers (ILECs) based on their linear footages or number of access lines, whichever is less. Newer providers (CLECs) are invoiced on their linear footages. One hundred percent of the money we received from the telecommunication providers is distributed to cities, villages, and townships. Seventy-five percent of the money is distributed to cities and villages based on a formula found in PA 51. Twenty-five percent of the money is distributed to townships and is based on each township's linear footage as compared to the total linear footages for all townships.

For year 2006, the METRO Authority received the true ups, SBC, the state's largest provider, had adjusted their total liner footages down by approximately 8%. Comcast also adjusted their total linear footages in Michigan down by almost 48%. Section 8(11) of the METRO Act directs cable companies to pay at the rate of \$0.01/linear foot. However, section 8(12) states:

(12) The cable provider may satisfy the fee requirement under subsection (11) by certifying to the authority that the provider's aggregate investment in this state since January 1, 1996, in facilities capable of providing broadband internet transport access service exceeds the aggregate amount of the maintenance fees assessed under subsection (11).

Because Comcast's reported "aggregate investments" far exceeded the amount they would be invoiced, they are exempt from paying METRO fees. However, the METRO Authority must use their reported linear footage in calculating township payments.

In 2005, the METRO Authority invoiced providers a total of \$23,277,302. For year 2006, mostly as a result of SBC's true up, the METRO Authority invoiced a total of \$21,416,893 or \$1,860,429 less than in 2005. Thusly, the amount METRO Act funds to distribute to municipalities decreased by about 8.7%; many townships were more adversely impacted as their funding is based on the percentage of linear feet as compared to the total linear feet for all townships.

SBC/AT&T indicated that it performed a comprehensive review of its facilities in more than 1,100 municipalities to ensure that it was accurately reporting and paying METRO Act fees based on the actual linear footage of facilities located in municipalities' public rights-of-way. The result of this review was a decrease of 2006 reported linear footage of 26,582,729 from the 2005 amount of 328,715,896 linear feet. It is anticipated that, as a result of their comprehensive review, there will be fewer and smaller year-to-year changes in footage reports.

While the METRO Authority has the statutory ability to audit provider reports/information, due to limited staff (2 ½) and no operational funding, it cannot perform this task at this time.

***E. Possible New Providers***

Section 8(2) of the METRO Act authorizes the METRO Authority to determine the amount of fees to be collected from telecommunication providers; and the information required to calculate those fees. Upon review of the municipality permits listed by the MPSC, and other sources, numerous providers have been identified as possibly coming under the jurisdiction of the METRO Act. As a result of our efforts, new CLECs were identified and invoiced in 2006. Most of the organizations contacted have claimed exemption from the act (i.e., "educational institution" or "no facilities"); some are still under review. Others have not responded to our communication efforts. Upon review of the 2006 MPSC Permit List (Attachment I) several additional companies have filed applications that have not paid maintenance fees and will be contacted regarding their METRO Act status.

***F. METRO Authority Data Base Conversion Project***

Most of METRO Authority's information resides on Excel spreadsheets. The Authority, in collaboration with the Department of Information and Technology, is in the process of converting these spreadsheets into databases for better utilization of the large masses of information collected.

One example of spreadsheets used for a variety of purposes are files which are comprised of all linear footages provided for all 1,778 Michigan municipalities by telecomm providers, including cable companies.

Internally, these footages are currently used for two purposes: 1) the total linear footages for each provider are used to calculate their annual maintenance fee; and 2) calculation of payments to townships are based on the percentage of their linear footages as compared to the total linear footages for all townships in Michigan.

The METRO Authority has engaged the assistance of the Michigan Department of Information & Technology to convert spreadsheets into databases, such as METRO Authority payments, municipal and provider contact information, annual report information, etc. These will be used for future correspondence to municipalities and providers, for invoicing providers and processing payments to municipalities, and for legislatively required reports.

The METRO Authority project will be a national proto-type with the following capabilities, with other applications to be added later:

- 1) Data look up/edit capabilities for all staff on contact information, footages, invoices, payments, etc.
- 2) Linear footage and contact information available on our web site for municipalities to review their personal data.
- 3) Municipal payment history.
- 4) Provider invoice history.
- 5) Calculate and print invoices.
- 6) Calculate city and village payments in-house (currently relying on MDOT).
- 7) Calculate and print municipal payment reports (payments are made on direct vouchers in MAIN).
- 8) Easier update of linear footages.
- 9) Print status report for invoice payments.
- 10) Archival information
- 11) Possible tie ins with Broadband Authority and/or PSC.
- 12) Create listing of each telecommunication provider's linear footage in every municipality/county to put on Authority's website. Currently, the vast majority of municipalities do not have this information.
- 13) Create database of counties that process right-of-way permit applications for townships.

- 14) As a searchable database for municipal officials to determine which providers have reported linear footages in their municipalities and the amounts they have reported.
- 15) To allow entrepreneurs to determine the telecommunication infrastructure in any Michigan municipality they may wish to start/expand economic development activities.

The Michigan Department of Technology has projected that the project will be completed by June 2007.

***G. Provider Property Tax Credit Coordination***

The METRO Authority initiated and is continuing to work with the Michigan Public Service Commission and the Michigan Department of Treasury to develop a set of procedures and guidelines to timely process property tax allowed/granted telecom providers under the METRO Act and PA 50.

***H. METRO Authority 2006 Policy/Issue Determinations***

The METRO Authority made/issued the following, but not limited to, determinations to clarify certain issues of interest to municipalities and providers: (Refer to METRO Authority's website: [www.michigan.gov/metro](http://www.michigan.gov/metro))

- METRO Authority Annual Report Guidelines (revised February 28, 2007) regarding the report of use of funds by municipalities with populations over 10,000; and Guidelines for the Use of Right-of-Way Funds.
- Term Limits of Unilateral Rights-of-Way Telecommunication Permits  
Confirmed, via the Michigan Public Service Commission, that municipalities have the option of approving a telecommunication unilateral permit for less than five (5) if years if they choose per Section 7.1 of the MPSC's Unilateral Right-of-Way Telecommunication Permit.
- Provider Utility Box Installations  
Several municipalities inquired whether, under the METRO Act, a municipality is restricted or prohibited from imposing certain regulations/guidelines on a provider installing utility boxes/cabinets in its public rights-of-way. Municipalities were advised that Sections 15(2) and 19(1) of the METRO Act does not "limit a municipality's rights to review and approve a provider's access to an ongoing use of a public-right-of-way to ensure and protect the health, safety, and welfare of the public."
- Facilities Moving Costs  
Several municipalities requested information regarding who pays the cost of moving telecom facilities due to municipal projects in light of the City of Taylor v Detroit Edison. In this particular case, the city passed an ordinance

requiring the utility to pay for burying certain electric lines. This ordinance was found to be contrary to state law which gives the MPSC the authority to determine whether the city or the utility should have paid the costs of burying the utility company's electric lines. Municipalities were advised that in the case of telecom providers having the METRO Act/MPSC required unilateral or bilateral permits with municipalities, the responsibility for relocation of facilities cost is specifically described as follows:

“If Municipality requests Permittee to relocate, protect, support, disconnect, or remove its facilities because of street or utility work, or other public projects, Permittee shall relocate, protect, support, disconnect, or remove its Facilities, at its sole cost and expense, including where necessary to such alternate route as Municipality, applying reasonable engineering standards, shall specify.:

Thusly, the Bilateral/Unilateral permits issued by municipalities for the METRO Act contains a “Use of Right-of-Way” clause (Section 4.1) which indicates that a municipality can require a provider to “modify” or “remove” at the provider's cost, if the municipality “reasonably determines” that facilities constituted an “undue burden or interference.” Section 15(2) of the METRO Act implies that a municipality has the authority to “ensure and protect the health, safety, and welfare of the public.”

■ Bundled Service Assessments

The METRO Authority addressed the issue of how to assess maintenance fees on telecommunication providers bundling telephone, cable TV, and broadband internet services. Providers that are licensed as CLECs, operate as CLECs, and charge their customers for telephone services are subject to the maintenance fee prescribed by Section 8 of the METRO Act.

The above decision is based on several factors including:

1. The METRO Act (Section 3) sets forth an outline of the METRO Authority's duties and powers as follows;

The authority shall [1] coordinate public right-of-way matters with municipalities, [2] assess the fees required under this act, and [3] have the exclusive power to assess fees on telecommunication providers owning telecommunication facilities in public rights-of-way within a municipality in a metropolitan area to recover the costs of using the rights-of-way by the provider.”

2. In addition to providing the duty and power to assess fees, Section 8 of the Act provides who pays the fees, what fees may be assessed, and how the fees are assessed for telecommunication providers occupying the public right-of-way. Section 8(1) further provides that except as

otherwise provided by this act, a provider shall pay to the authority an annual maintenance fee as required under this act. Section 8(2) specifically grants the METRO Authority the power to “determine for each provider the amount of fees required under this section.”

A “provider” is defined in Section of the METRO Act as follows:

“Telecommunication provider”, “provider”, and “telecommunication services” mean those terms as defined in section 102 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2102. Telecommunication provider does not include a person or an affiliate of that person when providing a federally licensed commercial mobile radio service as defined in section 332(d) of part 1 of the communications act of 1934, chapter 652, 48 Stat. 1064, 57 U.S.C. 332 and further defined as commercial mobile radio service in 47 C.F.R. 20.3, or service provided by any wireless, 2-way communication device. For purposes of this act only, a provider also includes all of the following:

- (i) A cable television operator that provides a telecommunication service.
- (ii) Except as otherwise provided by this act, a person who owns telecommunication facilities located within a public right-of-way.
- (iii) A person providing broadband internet transport access service.

As incorporated into the definition of a “telecommunication provider” under the METRO Act, section 102 of the Michigan Telecommunications Act (MTA) defines a “telecommunication provider” or “provider” as “a person that for compensation provides 1 or more telecommunication services” and excludes a provider of commercial mobile services. Neither the METRO Act nor the MTA limits the definition of telecommunication provider to owners of telecommunication facilities.

3. Sections 8(11)&(12) of the METRO of the METRO Act stipulates that cable TV providers having franchise or consent agreements with municipalities are subject to an annual maintenance fee of \$.01 cent per linear feet of public rights-of-way occupied by the provider’s facilities. This fee requirement may be satisfied by the provider’s certification that its aggregate investment in facilities in Michigan exceeds the aggregate amount of maintenance fees assessed. However, these sections of the Act deal exclusively with cable TV

providers and are not relevant or applicable to telephone service providers.

***I. METRO Authority Administrative/Operational Needs***

The METRO Authority staff still consists of only two full time staff (Director and a Secretary). Due to the numerous and complex duties and responsibilities to implement the METRO Act, there is critical need for additional staff; and a specific, detailed budget. Aside from resources needed to engage the Attorney General's assistance, there remains internal information technology needs from the Michigan Department of Information Technology, including, but not limited to:

1. Databases—Currently the METRO Authority has most of its data on quite large spreadsheets. Assistance is needed in converting this information to databases that will enable the Authority to build reports, mail merges, etc.
2. Web Page—The METRO Authority needs assistance to make its web page more useful, e.g. the capability for municipalities to review how much footage a telecommunication provider has reported in their right-of-way application, etc.
3. Payment Calculation—Currently, the METRO Authority must use MDOT to make payment calculation to municipalities based on their Act 51 fund distribution system. At some point, the Authority will need the capability to do these calculations in-house.

Part of the discussions in formulating the METRO Act included the need for funding to adequately implement Act (5-6 staff and a separate budget for operating and administrative expenses). However, the current legislation does not provide for a separate budget for operating and administrative expenses. Further, compounding the lack of funding for operating and administrative expenses, the transfer of the METRO Act to the DLEG also did not provide for funds needed to adequately administer this program. Currently, all collected maintenance fees must be distributed to municipalities. The METRO Act needs to be amended to provide funds to adequately administer this program.

There is urgent need to amend the METRO Act via the previously proposed legislation that would:

- Change the Provider payment of their state maintenance fee from one annual payment to four quarterly annual payments of 25% of the amount owed.
- Provide that up to 3% of the annual maintenance fees collected from Telecommunication Providers can be used to fund the operational expenses of the METRO Authority.

- Provide that the METRO Authority invest maintenance fee payments and that interest earned by used to fund operating expenses and administrative costs of the Authority.

Amendment of the METRO Act would have a very minor fiscal impact on the some 1,741 eligible municipalities currently sharing collected provider maintenance fees. The legislation would provide that no more than 3% of collected fees could be used for METRO Authority operating and administrative expenses. For FY06, this would have equated to about \$600,000 to operate a \$22-\$30 million dollar annual program. Further, passage of such an amendment would favorably impact the state as it would:

- Not cost the state any GF/GP funds
- Provide the opportunity for greater collection of maintenance fees to distribute to municipalities
- Provide the opportunity to greatly enhance the state telecommunication services infrastructure by increased investments
- Provider for greater opportunities for telecommunication providers to expand services throughout the state due to standardized policies/procedures
- Provide the opportunity for greater economic development activities, emerging technologies, job creation, etc.

The passing of such legislation would provide funds for operating and administrative expenses needed to operate this program. As one of the nation's recognized leaders in the development and encouragement of telecommunications services, such proposed legislation has the support of most of Michigan's telecommunication providers and municipalities.

Continued failure to provide the METRO Authority adequate funds for its operating and administrative expenses has curtailed its ability to adequately implement the METRO Act; and be of assistance to telecommunication providers and municipalities in the maintenance and/or expansion of telecommunication services throughout the state.